

8135.6.9
10
A N

A D D R E S S

TO THE

P U B L I C,

FROM THE

F R I E N D S

••

F R E E D O M.

ASSEMBLED AT THEIR CLUB,

At the *GOOSE and GRIDIRON*,

St. GILES's;

On Saturday, Feb. 1, 1793:

CONTAINING

A PROTEST against the LATE ASSOCIATIONS

FOR THE

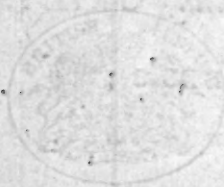
PROSECUTION of FELONS.

L O N D O N :

Printed and Sold by T. WILKINS, No 23, Aldermanbury ;
Sold also by J. Parsons, Paternoster-Row.

1793.

(Price 3d. or 18s. per hundred.)



47
10 9
130

An ADDRESS, &c.

THE peculiar excellence of the English Constitution, in which, indeed, the value of every Government may be summed up, is, that it creates an equal rule of action for the whole nation, and an impartial administration of justice under it.

From these master principles results that happy, unsuspecting, and unsuspected freedom which for ages has distinguished society in England, and which has united Englishmen in an enthusiasm for their country, and a reverence for their laws.

To maintain this fearless tranquility of human life, the prime blessing of social union, the power of accusation was not given to *uninjured* individuals, much less to *voluntary, undefined, unauthorized* associations of men acting without responsibility, and open to irregular and private motives of action; but was conferred upon the supreme executive magistrate, as more likely to look down upon the mass of the community with an unimpassioned eye; and even that wisely placed trust, guarded and bridled by the personal responsibility of those officers by which the crown is obliged to exercise its authority, and in the higher order of crimes, which on principle should extend to all, guarded once again by the office of the grand jury, interposed as a shield between the people and the very laws enacted by themselves.

These admirable provisions appear to be founded in a deep acquaintance with the principles of society, and to be attended with the most important benefits to the public; because, tempered again, and finally with the trial by the country, they enable the English constitution to ratify the existence of a strong, hereditary, executive government, consistently with the security of popular freedom.

By this arrangement of the royal prerogative of accusation, so restrained and mitigated in its course, the crown becomes an object of wholesome, but not dangerous jealousy; which, while it prevents it from overstepping its constitutional limits, endears the People

to one another from a sense of the necessity of union amongst themselves for the preservation of their privileges against a power dangerous to remove, but equally dangerous to exist unobserved and unbalanced.

Under this system, making allowance for the vices and errors inseparable from humanity, state accusations in modern times, though sometimes erroneous, have not often been rash or malevolent, and the criminal under the weight of the firm hand of justice has been supported by the indulgent fraternal tribunal of his country.

But, under the circumstances which assemble us together, all these provisions appear to be endangered.

A sudden alarm has been spread through the kingdom of imminent danger to the *persons and property of the Public by Men associated for the purpose of prosecuting Felons, and offering rewards for the apprehension of those who have not yet been convicted of any overt act of injustice or trespass upon the Rights and property of their fellow subjects, but who are described by the opprobrious epithets of FELONS and ROGUES, and loaded with reproachful names which belong to those alone who have actually been detected in the crimes which are laid to their charge.* The nation has been represented to be infested with *Thieves and Robbers*; the minds of the public have been prejudiced against a class of citizens unconvicted of any crime; and we are eventually deprived of that chance of escape which is one of the greatest encouragements to the spirit of adventure, without which the perilous profession we are engaged in would have no temptation left to induce us to pursue it.

The existence or extent of these evils, since they have been sanctioned though not ascertained, by *Associations so formed*, we have not, upon the present occasion, assembled to debate. But we may, without the *suspicion of Irony*, congratulate our fellow-subjects, that the *Associates* had the vigilance to detect that *numerous and bloody hord of Robbers* which otherwise might have *secreted themselves* and passed *unknown and undiscovered*; and that, without the punishment of a single individual for any overt act of violence, the people have

have recovered all that tranquility and *security* which they appeared to us to have *sufficiently* possessed at the time when the alarm burst forth

That large classes of the community should nevertheless give faith to the assertions and acts of *such Associations* is neither to be wondered at nor disapproved. When *their Property* is authoritatively represented to be in danger, *it is natural for Englishmen to unite in its defence.* When that danger is further represented to have been caused or increased by the *bolder enterprizes of our adventurous brotherhood*, we acknowledge that it is the duty of every good citizen in his proper sphere and by proper means, *in his own person to resist it*; and nothing is further from the intention of this meeting than to hold up to public disapprobation such individuals as from honest motives have joined associations, even though they may in their zeal, have shot beyond that line of exertion which we (mistakenly perhaps, but conscientiously,) conceive to be the safe limitation of assistance to executive government by private men.

We assemble neither to reprehend nor to dictate to others, but, from a principle of public duty, to enter our solemn protest against the propriety or justice of those associations, which, by the contagion of example, are spreading fast over England; supported by the subscriptions of opulent men, for the avowed object of suppressing and prosecuting *Felons*; more especially when accompanied with rewards to informers; and above all, when these rewards are extended (of which there are instances) to *discover and bring to justice offences committed* even in the private intercourses of domestic life, unmixed with any act of violence or manifested intention against the *persons of our fellow subjects.*

We refrained, at our former meeting, from pronouncing these proceedings to be illegal and punishable, because we must receive the rule from our statutes and precedents of law, which are silent on the subject; but we consider them to be doubtful in law, and unconstitutional in principle from the whole theory and all the analogies of english justice.

In the first place, we object to them as wholly unnecessary; and we give this objection precedence, because there ought to be a visible necessity or expediency to vindicate every innovation in the mode of administering the laws. Supposing, then, the conjuncture to be what it is by *the authority of these Associations* represented, the crown is possessed of the most ample powers for the administration of speedy and universal justice.

If the ordinary sittings of the courts are found at any time to be insufficient for the accomplishment of their jurisdictions, or if even a salutary terror is to be inspired for the general security, the king may appoint special commissioners for the trial of offenders.

If the revenue, devoted to the ordinary purposes of criminal justice, should be found insufficient for an unusual expenditure, parliament is ever at hand to supply the means; and no parliament can be supposed to refuse, or the people be suspected to murmur at so necessary an expence.

If information, also, become necessary for the discovery and conviction of offenders, the crown may at any time, by its authority, set even informers in motion.

But under this awful process, public freedom would still be secured, while the public safety was maintained. The crown, still acting by its officers, would continue to be responsible for the exercise of its authority; and the community, still bound together by a common interest, and cemented by the undisturbed affections and confidences of private life, would be sound and pure for the administration of justice.

This we maintain and publish to be the genius of the British constitution, as it regards the criminal law.

But when, without any state necessity, or requisition from the crown or parliament of the kingdom, bodies of men voluntarily intrude themselves into a sort of partnership of authority with the executive power; and when, from the universal and admitted interest of the whole nation in the object or pretexts of such associations, the people (if they continue to spread as they have done) may be said to be in a manner represented by

by them,—where is the accused to find justice amongst his peers, when arraigned by such combinations? Where is the boasted trial by the country, if the country is thus to become informer and accuser? Where is the cautious distrust of accusation, if the grand jury may themselves (or some of them) have been the very persons upon whom the robberies have been committed, brought in the very bill which they are to find, and subscribed for the prosecution of it? Where, in the end, is the mild, complacent, relenting countenance of the jury for trial—that last consolation which the humanity of England never denied even to men taken in arms against her laws, if the pannel is to come reeking from vestry rooms where they have been listening to harangues concerning the absolute necessity of extinguishing the very crimes and the criminals which they are to decide upon in judgment, and to condemn by their verdicts.

But, if these proceedings must thus evidently taint the administration of justice, even in the superior courts where the judges, from their independence, their superior learning, and their further removal from common life, may be argued to be likely to assist juries in the due discharge of their office—what must be the condition of the courts of quarter sessions, whose jurisdictions over these offences are co-ordinate—where the judges are the very gentlemen who lead those associations in every county and city in the kingdom, and where the jurors are either their tenants and dependents, or their neighbours in the country, justly looking up to them with confidence and affection, as their friends and protectors in the direction of their affairs? Is this a trial by an English court and jury? It would be infinitely more manly, and less injurious to the accused, to condemn him at once without a hearing, than to mock him with the empty forms of the British constitution, when the substance and effect of it are destroyed.

By these observations, we mean no disrespect to the magistracies of our country. But the best men may inadvertently place themselves in situations absolutely incompatible with their duties. Our natures are human, and we err when we consider them as divine.

The incongruities arising from this rage of popular accusation, or even of declared popular support to *such* accusations are not our original observations. We are led to them by the analogies and institutions of the law itself.

On this principle, criminals impeached, not by the people heated with a sense of individual danger, and personally mixing themselves with the charge and the evidence, but impeached by the house of commons representing them, are tried, from the necessity of the case by the lords, and not by the country. This anomaly of justice arose from the humanity and wisdom of our ancestors. They thought that, when the complaint proceeded not from the crown, whose acts the people are accustomed to watch with jealousy, but from the popular branch of the government, which they lean towards with favour, it was more substantial justice to the meanest man in England to send him for trial before the lords, though connected with him by no common interest, but on the contrary, divided by a separate one, than to trust him to a jury of his equals, when the people, from which it must be taken, was even in theory connected with the prosecution, though totally unacquainted, in fact, with its cause, or with its object.

We appeal with confidence to the reason of the public, whether these principles do not apply, by the closest analogy, to the proceedings which we assemble to disapprove. For, as criminal jurisdictions are local, the offence must be tried in the country, and frequently in the very town where it is charged to be committed; and thus the accused must not only stand before a court infected by a *general prejudice against the supposed offender that infests their neighbourhood*, but in a manner, disqualified by a *pointed and particular passion and interest*.

We have further to remark, that these objections to popular associations, or the prosecution of crimes, apply with double force when directed against us than against any other objects of criminal justice which can be described or imagined.

Associations to prosecute offences against the game laws, or frauds against tradesmen, (which we select as familiar instances, though we do not vindicate them,
but

but sympathise with our fellow subjects and sufferers in this encroachment upon their rights) nevertheless distinctly describe their objects, and in suppressing illegal conduct, have no immediate tendency to deter from the exercise of their rights those who at the hazard of their lives brave the terror of the laws, mean no personal injury, but content themselves with the accidental booty which the unknown and therefore unoffended passenger may chance to have.

No unqualified person can shoot or sell a hare or a partridge, as long as a monopoly in *property* is suffered to continue, without knowing that he *trespasses upon the grounds of another*, and without the *plea of necessity to urge in excuse*; and there can be no difference of judgment upon the existence, extent, or consequence of the offence. The trial is of a mere fact. By such associations, therefore, the public cannot be stated to suffer further than it always suffers by an oppressive system of penal law, and by every departure from the due course of administering it.

In the same manner, when a swindler obtains goods on false pretences, he cannot have done so from error. The act is decisive of the intention; the law defines the crime with positive precision; and the trial is in this case therefore, only the investigation of a fact; and in holding out terrors to swindlers, honest men are in no danger, nor does the public suffer farther than we have above adverted to.

These associations besides, from their very nature, cannot be so universal as to disqualify the country at large, by prejudice or interest, from the office of trial. They are bottomed besides, particularly the last, (which is a most material distinction) upon crimes, the perpetration of which is injurious to individuals as such, and which each individual, in his own personal right, might legally prosecute. Whereas we assemble to object to the popular prosecution of those *public* offences which the crown, if they exist, is bound in duty to prosecute; and where the personal interest of the subject is only as a member of that public which is committed to the care of the executive authority of the country.

The

The *system and science of adventure*, therefore, as it is to be affected by associations of individuals to fetter its general freedom, *wholly unconnected with any attack upon private character*, is a very different consideration; for if the nation is to be combined to suppress *robberies*, without further describing what those *robberies* are, than by the general denomination *felonious*; and if the exertions of these combinations are not even to be confined to suppress and punish the *felonies already condemned by the judgments of courts*, but are to extend to whatever does not happen to fall in with their private interests— if every *enterprize* is to be prosecuted which they may not have the *liberality to allow*, or the *spirit to attempt*; if no man is to *steal* but upon their principles, nor can use with safety except what they *allow to be his*, lest he should accidentally *make free with theirs*, no man will venture to *rob or steal*, a freedom which ever has been acknowledged by our greatest statesmen and lawyers to be the *privilege of all who have the courage to risk their lives in defiance of the laws*.

We will therefore *maintain and assert*, by all legal means, this sacred and essential privilege, the *source of our dependence and support*. We will *maintain and assert* the right of attacking our fellow-subjects by every means which may promote the *interests of our fraternity*: and while we *hold ourselves amenable to the laws*, we will remember at the same time, that, as they exist by the peoples consent, and for the Peoples benefit we have a right to examine their principles, to watch over their due execution, and to preserve the beautiful structure of their constitution, by pointing out, as they arise, those defects and corruptions which the hand of time never fails to spread over the wisest of human institutions.

If, in the legal and peaceable assertion of *our rights*, we shall be calumniated and persecuted, we must be contented to suffer in the cause of freedom, as our fathers before us have suffered; but we will, like our fathers, also persevere until we *are hanged*.

Let us, however, recollect with *regret*, that the law as it stands at this very moment, is amply sufficient for *our punishment*, if the country will but *put the laws in force*

force. The English law has wisely *provided for every known offence*; and it is the office of the jury alone, taken from the county in each particular instance to ascertain them, and the trust of the individual *that is injured to prosecute the offender to conviction.*

This system appears to us *sufficiently* to secure the *property* of the subject; but if this selection is to be transferred to self constituted assemblies of men, agitated by a real, however honest enthusiasm, *our trade* must be broken up, and individuals *will enjoy their possessions in perfect security and peace.*

In such a state, we admit that the other liberties which we enjoy under the laws, might nevertheless continue as long as *we might have the good fortune to elude the search of those whom they have set as spies upon our conduct*; but should *experience or enmity* direct their efforts further, *we might* be surprised and enslaved—surprised by the loss of *our* wakeful sentinels, whom they had shot for only being at their posts, and enslaved from the loss of *our* armour, which *our* adversary, under the pretence of *security, had taken from us.*

But these evils become not only greater, but absolutely intolerable, when extended to the stimulation of spies to stab domestic peace, to watch for the innocent in the hours devoted to convivial happiness, and to disturb the sweet repose of private life upon the bosom of *our DOXIES.*

It is justly observed that *impressions* are transitory and fleeting, easily forgotten, and subject to mistaken interpretations; the criminality of *our* conduct depending upon *circumstances, or occasion—all is to rest on the oaths of hired informers.* Is this, in the end of the 18th century, to be the condition of our *fraternity*? Are these to be our chains? And are we, after we have *risked our lives upon the road to be subject at last to the cowardly attacks of informers and spies.*

Our last, and not the least objection to popular accusation, is the love we bear to the government of England, and our wish that its sanctions may be perpetual; it being our opinion, as expressed in our seventh Resolution at our former Meeting. “That

“ That a system of jealousy and *suspicion* has been at all times dangerous to the *interests of our fraternity.*”

For the truth of which we appeal to human nature ingeneral, *our profession* in particular, and to the *check which has already been put to our success.*

In the career of such a system of combination, we foresee nothing but oppression ; and when its force is extinguished, nothing but discontent, *starvation and death.* If government permits or countenances this distribution of its executive powers, how is it to resume them should opinion change, and run the other way ? From the artifices and ambition of designing men, the best *pursuits* may, for a season, be unpopular, as we know, from experience, that the very worst may triumph for a while by imposture. Should such a change of opinion arrive, as in the nature of things it must, the administration of government and justice will be distracted and weakened. It will be in vain to inculcate that subjects may persecute one another by combination, but that they must not combine for their common defence. And as, in this unnatural tide of flood, no man may expect to be acquitted, however he may *escape from his pursuers* ; so, in the ebb of the same tide, equally unnatural, it may be difficult to bring to conviction even those who may *deserve to be hanged.* Against both these departures, from the even and usual course of justice, and all their consequences, we *equally*, and with an *impartial* spirit, protest.

When we consider the great proportion of the community, that has already hastily sanctioned the proceedings which we dissent from, the great authority that countenances them, the powerful influence which supports them, and the mighty revenue raised upon the people, *as rewards to the enemies of our liberty and lives* ; We feel the difficulties which this ADDRESS has to encounter ; and, judging of man from his nature and his history, we expect no *immediate* success from our interposition. But we believe that the season of reflection is not far distant, when this humble effort for the public will be remembered, and its authors vindicated by the people of Great Britain.

